

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

GARY VAUGHN #1646207	§	
v.	§	CIVIL ACTION NO. 9:13cv8
WARDEN BUTCHER	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Plaintiff Gary Vaughn, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges. The sole named Defendant is Warden Butcher.

Vaughn complains of an incident in which he was removed from the law library without being officially notified that he was receiving a disciplinary case. He complains that an officer grabbed his arm while he was trying to sign in, his grievance forms are being “mis-signed,” rules and codes are being violated because inmates are held in “double custody” and fire drills are not being done, and he is the victim of discrimination because his mail is being held up.

After review of the pleadings, the Magistrate Judge issued a Report recommending that the lawsuit be dismissed under 28 U.S.C. §1915(g). The Magistrate Judge observed that Vaughn had filed at least three previous lawsuits or appeals which were dismissed as frivolous or for failure to state a claim upon which relief could be granted, meaning that he cannot proceed under the *in forma pauperis* statute absent a showing of imminent danger of serious physical injury. Because Vaughn did not pay the full filing fee or show that he is in imminent danger, the Magistrate Judge recommended that the lawsuit be dismissed.

Vaughn did not file objections to the Magistrate Judge's Report, but did submit an amended complaint. Even were this complaint construed as objections, however, such objections are without merit; Vaughn does not address the three-strike bar, nor show that he is in imminent danger of serious physical injury as of the date of the filing of the complaint.

The Court has conducted a careful *de novo* review of the pleadings in this case, including the Report of the Magistrate Judge and the Plaintiff's amended complaint, which was filed after the Report was issued. Upon such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct and that to the extent that the Plaintiff's amended complaint can be construed as objections to the Report, such objections are without merit. It is accordingly

ORDERED that the Plaintiff's objections are overruled and the Report of the Magistrate Judge (docket no. 6) is ADOPTED as the opinion of the District Court. It is further

ORDERED that the Plaintiff's applications for leave to proceed *in forma pauperis* (docket no.'s 2 and 5) are hereby DENIED. It is further

ORDERED that the above-styled civil action be and hereby is DISMISSED with prejudice as to the refiling of another *in forma pauperis* lawsuit raising the same claims as herein presented, but without prejudice to the refiling of this lawsuit without seeking *in forma pauperis* status and upon payment of the statutory \$350.00 filing fee. It is further

ORDERED that should the Plaintiff pay the full filing fee within 15 days after the date of entry of final judgment in this case, he shall be allowed to proceed in the lawsuit as through the full fee had been paid from the outset. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

So **ORDERED** and **SIGNED** this **13** day of **March, 2013**.



Ron Clark, United States District Judge